

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATRICK B. GARMHAUSEN; CHARLES F.
GARMHAUSEN; SUSAN I. GARMHAUSEN;
and PATRICK GARMHAUSEN,

Plaintiffs,

- against -

ERIC HOLDER, ATTORNEY GENERAL OF
THE UNITED STATES; FEDERAL BUREAU
OF INVESTIGATION SPECIAL AGENT JAMES
McCARTHY; FORMER ASSISTANT UNITED
STATES ATTORNEY WAYNE BAKER;
UNITED STATES DEPARTMENT OF JUSTICE,
and DEBRA CORRIDAN, a/k/a DEBRA T.
GARMHAUSEN,

Defendants.

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BLOOM, United States Magistrate Judge:

This *pro se* action¹ was commenced on April 27, 2009. No action was taken until November 5, 2008 as the case was inadvertently placed under seal by the Court. On that date, the Court ordered plaintiffs to pay the filing fee or move to proceed *in forma pauperis*. (Document 2.) The plaintiffs promptly paid the filing fee, but failed to serve defendants within the deadline set by the Court's November 24, 2008 Order. See documents 4, 6. I therefore recommended on May 26, 2009 that this case should be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). (Document 6.) Plaintiffs

¹Although Mr. Aaron David Frishberg filed an amended complaint which he signs "Attorney for Plaintiffs," it is unclear whether he represents all of the plaintiffs in this matter. Attorney Frishberg should clarify this matter as the docket sheet does not reflect that he is representing anyone except Patrick B. Garmhausen.

ORDER
07 CV 2565 (ARR)(LB)

objected to the Report and Recommendation, stating that they did not receive the Court's November 24, 2008 Order because the Court sent the Order to plaintiffs' old address. (Document 7.) Although it is plaintiffs' responsibility to notify the Court of any address changes, I nevertheless withdrew my recommendation and extended plaintiffs' time to serve defendants to August 10, 2009. Plaintiffs filed an amended complaint on August 19, 2009, re-pleading the action as a petition for a writ of mandamus. See document 10.

Plaintiffs have filed three returns of service regarding the following defendants: Special Agent James McCarthy, "Unknown Federal Agents Responsible for the Placement of Persons in the Federal Witness Protection Program," and the Department of Justice. (Documents 11-13.) According to plaintiffs' returns, defendants were served on August 10, 2009. However, defendants have not responded to the complaint.

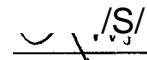
Although plaintiffs purport to have served process on "Unknown Federal Agents Responsible for the Placement of Persons in the Federal Witness Protection Program," the amended complaint does not bring claims against these individuals. See document 10. Therefore, they are no longer defendants in this case.²

Plaintiffs' return of service reflects that they served the U.S. Department of Justice by sending copies of the summons and complaint by certified mail to the U.S. Department of Justice in Washington, D.C., and to the process service clerk for the United States Attorney for the Eastern District of New York. (Document 13.) The other return reflects service on Special Agent James McCarthy at 135 Pinelawn Road, Suite 350S, Melville, New York 11747.

² In any case, you cannot serve process on a "John Doe."

The Clerk of Court shall send a copy of this Order to the United States Attorney for the Eastern District of New York. Defendants shall respond to plaintiff's complaint by November 30, 2009.

SO ORDERED:



LOIS BLOOM
United States Magistrate Judge

Dated: November 6, 2009
Brooklyn, New York